

REMARKS

This paper is responsive to the Office Action mailed on May 19, 2005. Reconsideration of this application is respectfully requested. Claims 1-20 are currently pending in this application. Claims 1-2, 6, and 10-20 are previously presented. Claims 1, 11 and 14 remain under consideration and are independent. There are no new claims. No new matter is added.

The rejection of claims 1-3 and 7-20 under 35 U.S.C. §103(a) as being unpatentable over Broyles (U.S. Patent No. 3,049,729) in view of Poole (UK Patent Application No. 2 172 198 A) is hereby traversed and reconsideration thereof is respectfully requested in view of remarks set forth below.

The combination of Broyles and Poole fails to teach each and every element of the claimed invention. The Office Action asserts Poole describes a “mattress assembly constructed substantially of plastic material comprising a frame assembly.” The Action states that Poole provides the basic teaching of a plurality of frame units (10, 20, 30, 40). Though not clear from the Action, the plastic frame assembly ostensibly reads on the plurality of frame units. Applicant respectfully disagrees. The frame units of Poole are made of metal, not of plastic material, as required by the claims 1 and 11.

Further, neither Poole nor Broyles suggest “a frame assembly comprising a plurality of ground support members,” as required by claim 1. Poole solely describes a pedestal (64) extending from a base (62) wherein, frame units are attached to the base (see page 2, lines 23-25). Broyles is silent with respect to “a frame assembly comprising a plurality of ground support members.”

The Office Action further asserts that each of the plurality of frame units (10, 20, 30, 40) of Poole include a pattern (54, 56, 59) attached thereto. Applicant traverses the present assertion. Poole clearly characterizes 54, 56, and 59 as panels, not patterns. (see page 1, line 127—page 2, line 14) Even if one were to construe the decorative panels as those having patterns, this is still not “a mattress foundation comprising...a sidewall [that] includes a pattern integrally formed within the sidewall,” as required by claim 1. Again, Boyles is silent regarding a sidewall pattern of any kind. Furthermore, Poole does not teach or suggest any sidewall having a lower edge “depending downward from the top surface” as claimed by the invention.

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974) "All words in a claim must be considered in judging the patentability of that claim against the prior art. In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)."

There is no motivation to combine Poole with Broyles. Poole pertains a water bed frame (see summary), and Broyles relates to rigid foundation for a rubber mattress. Therefore, one of ordinary skill in the art of water bed frames would not look to the art of mattress foundations attempting to derive the claimed invention. Moreover, the combination is impermissible as it would be rendered inoperable. Specifically, the mattress foundation of Broyles cannot support the waterbed mattress and frame of Poole.

The proposed combination of the prior art would change the principle of operation of the prior art invention being modified. The principle operation of Poole is the application of panels to an unsightly metal frame assembly. By applying the panels to the foundation of Broyles, as suggested by the Office Action, the operation of Poole is irrevocably changed. MPEP 2143.01 states, "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)"

The rejection of claims 1-3, 8-14, and 17-20 under 35 U.S.C. §103(a) as being unpatentable over Propst (U.S. Patent No. 2,827,952) in view of Poole (UK Patent Application No. 2 172 198 A) is hereby traversed and reconsideration thereof is respectfully requested in view of remarks set forth below.

The combination of Propst and Poole fails to teach each and every element of the claimed invention. In fact, the Action omits many claimed elements and their disclosure within the cited references. Particularly, neither Propst nor Poole describe "mattress assembly constructed substantially of plastic material comprising a frame assembly," as recited by claim 1. To continue, neither Propst nor Poole describe: "a mattress foundation"; "a generally planar and essentially rigid top surface having an upper side and a lower side"; "at least one essentially rigid sidewall"; "a cavity"; "a frame assembly comprising a plurality of ground support members" nor, "a pattern integrally formed with the sidewall," all required by claim 1.

Neither Propst nor Poole describe: "a generally planar and essentially rigid top surface having an upper side and a lower side"; "a perimeter of the lower side of the top surface at least one essentially rigid sidewall"; nor "a pattern on an outer surface of the sidewall," as recited by claims 11 and 14.

There is no motivation to combine Poole with Broyles. Poole pertains a water bed frame, and Poole relates to cushion construction. One of ordinary skill in the art of cushion construction would not look to the art of water bed frames to produce a plastic mattress foundation.

At least for these reasons, neither Broyles nor Propst or Poole, taken either alone or in combination, teach or suggest the features recited claims 1, 11, and 14. Therefore, claims 1, 11, and 14 distinguish over the art of record and should be allowed. Claims 2-10, 12-13, and 15-20 depend, directly or indirectly, from claims 1, 11, and 14 and are also patentable for at least for the same reasons that claims 1, 11, and 14 are patentable. In view of the above amendment, applicant believes the pending application is in condition for allowance.

We believe that we have appropriately provided for fees due in connection with this submission. However, if a fee is due, please charge our Deposit Account No. 18-1945, under Order No. SMCY-P02-085 from which the undersigned is authorized to draw.

Dated: November 21, 2005

Respectfully submitted,

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